CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
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W15b

Appeal filed.....12/27/2002
49th day..... 2/14/2003
Staff .....D.Carl

Previous Coastal Commission Actions & Dates
Substantial issue found 2/6/2003
Project approved with conditions..... 6/11/2003

Revised Findings
Revised findings staff report prepared.... 7/22/2003
Revised findings hearing date..... 8/6/2003
Revised findings hearing item number.....W15b

APPEAL STAFF REPORT - REVISED FINDINGS

Appeal number.....**A-3-SCO-02-117, Davenport Barn**

Applicant.....David Luers

Appellants.....Commissioners Sara Wan and Pedro Nava; Sierra Club; Coastal Organizers and Advocates for Small Towns (COAST)

Local government .....Santa Cruz County

Local decision.....Approved with Conditions (November 13, 2002)

Project location.....Roughly one acre parcel located at the intersection of Old Coast Road, Davenport Avenue, and Highway One in the town of Davenport on Santa Cruz County's north coast.

Project description.....Demolish a deteriorated barn, remove a 5-foot diameter and approximately 70-foot tall eucalyptus tree, and construct a 3-story, roughly 6,400 square foot structure (4,316 square feet of enclosed interior space and 2,084 square feet of wrap-around decks/walkways) that would include two residential units and a retail sales operation (the project is roughly half residential and half retail), with an approximately 4,700 square foot 10-car parking lot and associated hardscape (patios and paths) and landscaping.

File documents.....Santa Cruz County Certified Local Coastal Program (LCP); Coastal Commission Appeal files A-3-SCO-02-088 (RMC Pacific Materials), A-3-SCO-00-106 (Licursi Forester's Hall), A-3-SCO-98-101 (Bailey-Steltenpohl); and Santa Cruz County CDP Application File 98-0234.

Commissioners on prevailing side: Desser, Hart, McClain-Hill, Peters, Potter, and Woolley

Staff note: The Coastal Commission approved this proposed project after public hearing on June 11, 2003 by a vote of 6-3. Because the staff recommendation had been for denial, this report contains revised findings and conditions reflecting the Commission's action. For this same reason, the findings have been modified throughout from the previous version of the staff report, including major changes to the riparian corridor and community character findings.

Synopsis of the Coastal Commission's June 11, 2003 action: The Applicant's proposed project raised interconnected LCP coastal resource issues, including the protection of willow riparian woodland ESHA, Davenport's community character, and water quality. The Commission generally concluded that the proposed project was consistent with Davenport's character, and that impacts to ESHA and water quality could be limited through conditions of approval. After public hearing, the Coastal Commission approved the Applicant's proposed project subject to conditions of approval by a 6-3 vote.

Report Contents

Exhibit M: Applicable LCP Policies
Exhibit N: Santa Cruz County Findings and Conditions
Exhibit O: Applicant's Biological Assessment
Exhibit P: Allowed Site Disturbance Area

1. Project Procedural History

Santa Cruz County has a certified LCP, and this proposed project was reviewed for several years in a local coastal permit application process before the County took action on it in late 2002. The Commission participated in this local review process, including providing directive comments through a series of staff letters, emails, meetings (with the Applicant and the County), site visits, and phone conversations (see, for example, exhibit J for Commission staff local review comment letters). At the conclusion of the County's process, the Planning Commission approved the proposed project by a 3-2 vote. The Planning Commission's approval was then appealed to the Commission by Commissioners Sara Wan and Pedro Nava, the Sierra Club, and Coastal Organizers and Advocates for Small Towns (COAST). On February 6, 2003, the Coastal Commission found that a substantial issue existed with respect to the proposed project's conformance with the LCP and took jurisdiction over the coastal development permit for the proposed project. On June 11, 2003, the Commission conditionally approved the project. Because Commission staff's recommendation at the June 11, 2003 hearing was that the project be denied, revised findings and conditions of approval reflecting the Commission's June 11th action are necessary.

2. Staff Recommendation on Revised Findings

Staff recommends that the Commission adopt the following revised findings in support of its approval with conditions of a coastal development permit for the proposed development on June 11, 2003.

Motion. I move that the Commission adopt the revised findings in support of the Commission's action on June 11, 2003 approving with conditions the development proposed under appeal number A-3-SCO-02-117 pursuant to the staff recommendation.

Staff Recommendation of Adoption. Staff recommends a **YES** vote. Passage of this motion will result in adoption of the following resolution, revised findings and conditions as set forth in this report. The motion requires a majority vote of the members from the prevailing side present at the June 11, 2003 hearing, with at least three of the prevailing members voting. Commissioners eligible to vote on the revised findings are Commissioners Desser, Hart, McClain-Hill, Peters, Potter, and Woolley. If the motion fails, the revised findings are postponed to a later meeting.

Resolution. The Commission hereby adopts the findings and conditions set forth below for approval with conditions of a coastal development permit for the proposed development on the grounds that the findings support the Commission's decision made on June 11, 2003 and accurately reflect reasons for it.

3. Conditions of Approval

A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit Revised Final Plans to the Executive Director for review and approval. The Revised Final Plans shall be substantially in conformance with the plans approved by Santa Cruz County as submitted to the Coastal Commission (*The Luers Building* by Terri L.N. Fisher, dated received in the Coastal Commission's Central Coast District Office December 4, 2002) but shall show the following changes and clarifications to the project:

   (a) Property Lines. All property lines shall be clearly identified. For any development located outside of the Permittee's property, the Permittee shall include written evidence that the underlying property owner (e.g., Caltrans and/or Santa Cruz County) consents to such development.

   (b) Disturbance Area. The Plans shall clearly identify the disturbance area in site plan view. The disturbance area shall be limited to the area on the property that is west of the riparian corridor and west of the break in slope as shown in exhibit P. All development, other than native landscape restoration pursuant to special condition 4, shall be confined to the disturbance area. The remainder of the property is a willow riparian woodland non-disturbance area within which development is prohibited. The plans shall clearly identify and label both the disturbance area and the willow riparian woodland non-disturbance area on the property with closed polygons in site plan view.

(c) Building Height. The building shall not exceed 32.4 feet in height in any location as measured from existing or finished grade, whichever is lower. The plans shall identify existing and finished grade in each elevation, along with a line depicting 32.4 feet above each where the 32.4 foot line mimics the contour of existing and finished grade.

(d) Roof Pitch. The roof pitch shall be the same as the existing barn. The plans shall include an elevation view of the existing barn identifying the roof pitch, and shall indicate how the new building roof pitch matches the existing roof pitch.

(e) Lighting Plan. All lighting shall be minimized (in terms of number of lights and brightness) and shall be directed away from the willow riparian woodland. All exterior lighting shall be clearly identified, and the maximum intensity of it clearly noted. All interior lighting shall be directed away from windows that are visible from the willow riparian area, and the plans shall indicate how this is accomplished. All lighting shall be downward directed and designed so that it does not produce any light or glares off-site. Exterior lighting fixtures shall use flat-bottomed (as opposed to rounded bottom) bulbs to avoid light beam scattering.

(f) Landscaping. Invasive plant species shall be prohibited, and the plans shall identify only non-invasive species within the site disturbance area. Non-invasive native plant species are preferred.

(g) California Red-Legged Frog Fence. The 6-foot high fence along the demarcation line between the disturbance area and the willow riparian woodland non-disturbance area (along the break in slope above the willow riparian woodland – see exhibit P) shall be capable of preventing passage of California red-legged frogs. Additional fencing shall be installed along the demarcation line (or on the site disturbance side of said line), from the northern end of the fence line shown on the submitted plans extending to Old Coast Road, so that a complete California red-legged frog barrier is established along the demarcation line (or on the site disturbance side of said line) between the disturbance area and the non-disturbance area on the Permittee's property. The additional fencing shall be of a design and height capable of preventing passage of California red-legged frogs (i.e., not necessarily 6-feet high, but adequate height to block frog passage) that is compatible with the materials of the structure and/or fences otherwise approved. The design of the fence shall be submitted with certification from a biologist experienced with, at a minimum, California red-legged frog, indicating that the fencing between the disturbance area and the willow riparian woodland non-disturbance area is capable of preventing passage of California red-legged frogs.

(h) Permanent Drainage and Erosion Control Plan. The plans shall include a drainage and erosion control plan that shall clearly identify all permanent measures to be taken to control and direct all site runoff, and that shall clearly identify a drainage system designed to collect all on-site drainage (in gutters, pipes, drainage ditches, swales, etc.) for use in on-site irrigation/infiltration and/or to be directed to off-site storm drain systems. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater and other runoff leaving the developed site. The plan shall include all supporting calculations. All site drainage features and/or structures (e.g., pipes) shall be confined within the disturbance area (specified in special condition

1), and are prohibited outside of the disturbance area. Such drainage and erosion control plan shall at a minimum provide for:

(1) The drainage system shall be designed to filter and treat (to remove typical urban runoff pollutants)[1] the volume of runoff produced from irrigation and from each and every storm and/or precipitation event up to and including the 85th percentile 24-hour runoff event for volume-based BMPs and/or the 85th percentile, 1-hour runoff event (with an appropriate safety factor) for flow-based BMPs, prior to its use for on-site infiltration, landscape irrigation and/or discharge offsite. All filtering and treating mechanisms shall be clearly identified, and supporting technical information (e.g., brochures, technical specifications, etc.) shall be provided;

(2) Runoff from the roof, driveway, parking lot, and other impervious surfaces shall be collected and directed into pervious areas on the site (landscaped areas) for infiltration to the maximum extent practicable in a non-erosive manner, prior to being conveyed off-site;

(3) Post-development peak runoff rates and volumes shall be maintained at levels similar to, or less than, pre-development conditions;

(4) All vehicular traffic and parking areas on site shall be swept and/or vacuumed at regular intervals and at least once prior to October 15th of each year. Any oily spots shall be cleaned with appropriate absorbent materials. All debris, trash and soiled absorbent materials shall be disposed of in a proper manner. If wet cleanup of any of these areas is absolutely necessary, all debris shall first be removed by sweeping and/or vacuuming, all drain inlets shall be sealed, and wash water pumped to a holding tank to be disposed of properly and/or into a sanitary sewer system;

(5) Appropriate spill response materials (such as booms, absorbents, rags, etc.) to be used in the case of accidental spills shall be maintained on-site in a readily accessible area. Employees shall be adequately trained in the use of such materials;

(6) All outside storage areas and loading areas shall be paved and either: (1) surrounded by a low containment berm; and/or (2) covered. All such areas shall be: (1) equipped with storm drain valves which can be closed in the case of a spill; and/or (2) equipped with a wash down outlet to the sanitary sewer;

(7) All drainage system elements shall be permanently operated and maintained. At a minimum:

(a) All filtration/treatment components shall be inspected to determine if they need to be cleaned out or repaired at the following minimum frequencies: (1) prior to October 15th

[1] Typical urban runoff pollutants describes constituents commonly present in runoff associated with precipitation and irrigation. Typical runoff pollutants include, but are not limited to: paints, varnishes, and solvents; hydrocarbons and metals; non-hazardous solid wastes and yard wastes; sediment from construction activities (including silts, clays, slurries, concrete rinsates, etc.); ongoing sedimentation due to changes in land cover/land use; nutrients, pesticides, herbicides, and fertilizers (e.g., from landscape maintenance); hazardous substances and wastes; sewage, fecal coliforms, animal wastes, and pathogens; dissolved and particulate metals; and other sediments and floatables.

each year; (2) prior to April 15th each year; and (3) during each month that it rains between November 1st and April 1st. Clean-out and repairs (if necessary) shall be done as part of these inspections. At a minimum, all filtration/treatment components must be cleaned prior to the onset of the storm season, no later than October 15th of each year;

(b) Debris and other water pollutants removed from filter device(s) during clean-out shall be contained and disposed of in a proper manner; and

(c) All inspection, maintenance and clean-out activities shall be documented in an annual report submitted to the County Public Works Department no later than June 30th of each year.

All requirements of this condition above shall be enforceable components of this coastal development permit. All requirements of this condition above shall be specified as plan notes on the Final Revised Plans, and the plan notes shall indicate that they shall apply for the lifetime of the approved development. The Final Revised Plans shall be submitted with evidence of review and approval from the appropriate official(s) from Santa Cruz County.

The Permittee shall undertake development in accordance with the approved Final Revised Plans. Any proposed changes to the approved Final Revised Plans shall be reported to the Executive Director. No changes to the approved Final Revised Plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

2. **Construction Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Construction Plan to the Executive Director for review and approval. The Construction Plan shall identify all measures to be taken to protect the willow riparian woodland non-disturbance area to the maximum extent feasible, and shall, at a minimum, include:

(a) Site Disturbance Area. The site disturbance and willow riparian woodland non-disturbance areas (see special condition 1) shall be clearly identified on the construction plan.

(b) Construction Fencing. The perimeter of the area subject to construction activity shall be limited to the site disturbance area, and shall be delineated by construction fencing adequate to repel California red-legged frog. The location of all such fencing must be clearly identified on the construction plan and the area enclosed designated as the construction zone. The construction zone should form a closed polygon and shall use gate structure(s) for construction access designed to repel frogs; the gates shall, at a minimum, be secured at the end of each working day. The construction zone fencing shall be maintained in good working order for the duration of the construction. No construction activities shall take place, and no equipment or material storage shall occur, outside of the established construction zone. CONSTRUCTION SHALL NOT COMMENCE UNTIL ALL CONSTRUCTION ZONE FENCING IS COMPLETELY INSTALLED AND OPERATIONAL.

(c) Biological Monitor. A qualified biological monitor (i.e., a biologist experienced with, at a

minimum, California red-legged frog, and possessing all appropriate permits and/or permissions to handle this listed species) shall be present at the site as follows:

(1) Prior to the installation of construction zone fencing, the monitor shall survey the construction zone and immediately adjacent areas for the presence of California red-legged frog. Any individual frogs found during the field survey shall be relocated to appropriate protected areas outside of the construction zone. The construction zone must be surveyed within 72 hours of subsequent fencing and culvert installation.

(2) During the installation of construction zone fencing, the monitor shall be present and shall oversee the installation of all construction zone fencing.

(3) Immediately following installation of construction zone fencing, the monitor shall re-survey the enclosed construction zone for the presence of California red-legged frog. Any individual frogs found during the re-survey shall be relocated to protected areas outside of the construction zone. CONSTRUCTION SHALL NOT COMMENCE UNTIL THE BIOLOGICAL MONITOR HAS DEEMED THE ENCLOSED CONSTRUCTION ZONE DEVOID OF CALIFORNIA RED-LEGGED FROG.

(4) During construction, the monitor shall make weekly site visits to verify that all construction zone fencing is in place and functioning as intended. Any repair or maintenance to the fencing deemed necessary by the monitor shall be completed under the monitor's supervision. Such maintenance activities include adequate control of vegetation at the fence line to ensure that vegetation "ladders" are not allowed to establish (ladders that would allow protected species to access the construction zone over the fencing).

(5) After all construction activities are completed, the construction zone fencing shall be removed under the supervision of the monitor.

The biological monitor shall have the authority to halt all or some construction activities and/or modify all or some construction methods as necessary to protect habitat and individual sensitive species. The biological monitor shall complete monitoring reports for each day that the monitor is present that, at a minimum, indicate the date and time of work, weather and other site conditions, the monitoring biologist's name, project activity/progress, any listed species observed, any measures taken to repair and/or maintain fencing and/or culverts, and any construction modifications required to protect habitat. These reports shall be compiled and submitted to the Executive Director upon cessation of construction as part of a construction monitoring report.

(d) Water Quality BMPs. All erosion control/water quality best management practices to be implemented during construction and their location shall be noted. Silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction zone to prevent construction-related runoff, sediment, and/or debris from entering into the willow riparian woodland non-disturbance area, natural drainage swales that extend to San Vicente Creek and/or the Pacific Ocean, and existing storm drain inlets. Provisions shall be made for stockpiling and covering any

graded soils, equipment, and/or materials. A wet weather contingency plan shall be identified that clearly states what actions will be taken in the event of precipitation events to avoid off-site impacts due to runoff emanating from the construction zone. ALL EROSION, SEDIMENT, AND OTHER WATER QUALITY CONTROLS SHALL BE IN PLACE PRIOR TO THE COMMENCEMENT OF CONSTRUCTION AS WELL AS AT THE END OF EACH DAY.

(e) Good Housekeeping. The construction site shall maintain good construction site housekeeping controls and procedures, including: (1) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all dewatering operations shall include filtration mechanisms; (2) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage or existing drain inlet; (3) concrete rinsates shall be collected and properly disposed of off-site and they shall not be allowed to enter any natural drainage areas or existing drain inlet; and (4) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather.

(f) Work Schedule. Timing for all activities (e.g., 8am to 5pm work day; 12 hours a day; Monday through Friday; just weekends; every day; etc. and indications if there is any flexibility in each activity) shall be identified. All work shall take place during daylight hours with the following exception: any construction that occurs after sunset shall be limited to interior (of structures) work and shall be subject to the same lighting parameters as established for the completed structure by special condition 1.

(g) Consistency with Biological Assessment. Except to the extent any such recommendations conflict with these special conditions, the construction plan shall incorporate all recommendations of the Permittee's biological assessment (i.e., *The Luers Building – Biological Assessment* by Bryan M. Mori Biological Consulting Services dated January 15, 2002; see exhibit O).

All requirements of this condition above shall be enforceable components of this coastal development permit. All requirements of this condition shall be specified as plan notes on the Construction Plan, and the plan notes shall indicate that they shall apply for the duration of construction of the approved development. The Construction Plan shall be submitted with evidence of review and approval from the appropriate official(s) from Santa Cruz County.

The Permittee shall undertake development in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No changes to the approved Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

3. **Job Copy of Permit and Plans.** The Permittee shall maintain copies of the approved coastal development permit (including these conditions), the approved final plans (special condition 1), and the approved construction plan (special condition 2), on site for the duration of construction.

4. **Willow Riparian Woodland Native Landscape Restoration Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit a Willow Riparian Woodland Native Landscape Restoration Plan (Plan) to the Executive Director for review and approval. The Plan shall be prepared under the direction of a qualified biologist experienced in the field of willow riparian woodland landscape restoration, shall be developed consistent with current professional restoration standards, and shall apply to the willow riparian woodland non-disturbance area specified in special condition 1. The Plan shall provide adequate detail on measures to be taken to remove non-native and/or invasive plant species within the Plan area with the objective of the Plan to be primarily to enhance, maintain, and ultimately achieve self-sustaining and productive non-invasive native plant species in the willow riparian woodland. The Plan shall include a site plan of the property identifying the willow riparian woodland non-disturbance area and the area of site disturbance identified in special condition 1. The Plan shall, at a minimum, include the following:

   (a) Baseline: A baseline ecological assessment of the willow riparian woodland non-disturbance area, including but not limited to, assessment of its biological and physical characteristics.

   (b) Performance Standards and Success Criteria: Measurable performance standards and success criteria shall be established, including, at a minimum, standards applicable to invasive and/or non-native plant coverage, non-invasive native plant coverage, and vegetation health for any areas to be planted. Each performance standard shall identify: (1) the minimum standard to be achieved for each of the first 4 years after initial implementation (e.g., maximum of 50% non-native plant coverage after 1st year, 40% after 2nd, 30% after 3rd, etc.); (2) the condition or level that defines success after 5 years (e.g., maximum 10% non-native plant coverage after 5 years); and (3) the method to be used to evaluate conformance with each standard (e.g., random sample plots within the area will be evaluated annually to determine the percent of non-native plant coverage). All assumptions and methodologies underlying the selection of the standards, criteria, and evaluation methods identified shall be provided, including any background supporting literature. Success for each performance standard shall be sustained over the life of the project.

   (c) Implementation. All steps to be taken to implement the Plan and achieve success with the performance standards over the short term (i.e., up to year five) and long term (i.e., year five and beyond) including, but not limited to, details regarding: native seed and plant material collection, propagation, and/or acquisition; non-native species eradication methods; planting methods and species lists; maintenance schedules; and overall management measures. Implementation shall include a site plan that identifies specific areas where non-native vegetation is to be removed, and where native vegetation is to be planted as necessary (i.e., to stabilize soils where non-native and/or invasive plants are removed, and to avoid sedimentation). All measures to be taken to commence initial plan implementation (i.e., the first activities to take place) shall be clearly identified as such. The Plan shall provide for the Permittee to notify the Executive Director in

writing upon initial implementation of the Plan; the date on which such initial activities are commenced to be used for establishing monitoring and reporting schedules.

(d) Monitoring and Maintenance. The willow riparian non-disturbance area shall be monitored and maintained by a qualified biologist to achieve the required minimum performance standards. Monitoring of the area shall include both quantitative and qualitative evaluation, and shall occur as follows. On a quarterly basis (as measured from the initial implementation date) until success criteria are achieved, the area shall be briefly inspected, with such quarterly monitoring meant to be an overview of site conditions within which any minor remedial maintenance actions are to be initiated as necessary to achieve the required minimum performance standards. On an annual basis (as measured from the initial implementation date) until success criteria are achieved, and on an every five years basis after success criteria are achieved, the area shall be shall be rigorously inspected, with such monitoring meant to provide an exacting basis for measuring compliance with the required minimum performance standards, and implementing appropriate maintenance response as necessary to achieve required minimum performance standards. All monitoring observations and maintenance actions shall be recorded, and photo documentation provided.

(e) Reporting. Reports that clearly describe all quarterly and annual monitoring, maintenance, and remedial activities and observations, and that clearly assess conformance with all minimum performance standards and success criteria, and current professional restoration standards, shall be prepared annually by a qualified biologist. If any annual report should identify a failure to meet any of the minimum performance standards, the report shall include appropriate recommendations for achieving these minimum standards, including a list of the remedial measures, if any, that are to be implemented and a timeline for their implementation; any such remedial measures identified shall be undertaken as directed by the approved monitoring report. The annual reports shall be submitted no later than September 15th of each year for the review and approval of the Executive Director of the Coastal Commission. The annual reports shall be submitted each year until it has been confirmed in writing by the Executive Director of the Coastal Commission that all plan success criteria have been achieved; at a minimum, at least five such annual reports shall be submitted. After success criteria have been achieved, reports shall be submitted every five years (to coincide with the every five years monitoring requirement) no later than September 15th of each fifth year for the review and approval of the Executive Director of the Coastal Commission. The every five year reports shall be structured the same as the annual reports. All reports shall be signed and dated, and shall include copies of all previous approved reports as appendices.

All requirements of this condition above shall be enforceable components of this coastal development permit. The Construction Plan shall be submitted with evidence of review and approval from the appropriate official(s) from Santa Cruz County.

INITIAL IMPLEMENTATION OF THE PLAN MUST TAKE PLACE PRIOR TO OCCUPANCY OF THE DEVELOPMENT AUTHORIZED BY THIS COSTAL DEVELOPMENT PERMIT.

The Permittee shall undertake development in accordance with the approved Restoration Plan. Any proposed changes to the approved Restoration Plan shall be reported to the Executive Director. No

changes to the approved Restoration Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

5. **Willow Riparian Woodland Protection.** By acceptance of this permit, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that development, as defined in Section 30106 ("Development") of the Coastal Act and/or Section 13.10.700-D of the certified Santa Cruz County Local Coastal Program, shall be prohibited within the willow riparian woodland non-disturbance area specified in special condition 1, except for the following subject to any necessary permits and/or authorizations: (a) existing permitted development and approved repair and/or maintenance thereto; and/or (b) habitat enhancement measures undertaken pursuant to an approved plan.

6. **Santa Cruz County Conditions.** All conditions of approval imposed on the project by Santa Cruz County (Santa Cruz County Application Number 98-0234; see exhibit N) are incorporated herein directly by reference. Any County conditions requiring materials to be submitted to the County and/or otherwise requiring County approval (such as Planning Director approval), shall also require the same materials to be submitted to, and/or the same approvals granted by, the Executive Director under the same review and approval criteria as specified in the County conditions. For future condition compliance tracking purposes, such County conditions shall be considered subsections of this condition 6. To the extent any such County conditions conflict with these conditions (i.e., standard conditions 1 through 5, and special conditions 1 through 5, and 7), such conflicts shall be resolved in favor of these conditions.

7. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description and site plan of: the entire parcel or parcels governed by this permit; and the site disturbance and willow riparian woodland non-disturbance areas specified in special condition 1. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

Recommended Findings and Declarations

The Commission finds and declares as follows:

4. Project Description

A. Project Location

The proposed project is located in the unincorporated town of Davenport along Santa Cruz County's rugged north coast. See exhibits A, B, and C for illustrative project location information.

Santa Cruz County Regional Setting

Santa Cruz County is located on California's central coast and is bordered to the north and south by San Mateo and Monterey Counties (see exhibit A). The County's shoreline includes the northern half of the Monterey Bay and the rugged north coast extending to San Mateo County along the Pacific Ocean. The County's coastal zone resources are varied and oftentimes spectacular, including the Santa Cruz Mountains coastal range and its vast forests and streams; an eclectic collection of shoreline environments ranging from craggy outcrops to vast sandy beaches (in both urban and more rural locations); numerous coastal wetland, lagoon and slough systems; habitats for an amazing variety and number of endangered species; water and shore oriented recreational and commercial pursuits, including world class surfing areas; internationally renowned marine research facilities and programs; special coastal communities; vast State Park lands; and the Monterey Bay itself. The unique grandeur of the region and its national significance was formally recognized in 1992 when the area offshore of the County became part of the Monterey Bay National Marine Sanctuary – the largest of the 12 such federally protected marine sanctuaries in the nation.

Santa Cruz County's rugged mountain and coastal setting, its generally mild climate, and its well-honed cultural identity combine to make the area a desirable place to both live and visit. As a result, the County has seen extensive development and regional growth over the years that the California Coastal Management Program has been in place. In fact, Santa Cruz County's population has more than doubled since 1970 alone with current census estimates indicating that the County is currently home to over one-quarter of a million persons.[2] This level of growth not only increases the regional need for housing, jobs, roads, urban services, infrastructure, and community services, but also the need for park areas, recreational facilities, and visitor serving amenities. For coastal counties such as Santa Cruz where the vast majority of residents live within a half-hour of the coast, and many closer than that, coastal zone resources are a critical element in helping to meet these needs. Furthermore, with the shoreline itself (and its parks, beaches, trails, etc.) attracting visitors into the region, an even greater pressure is felt at coastal recreational areas and visitor destinations like Davenport. With the Santa Cruz County shoreline and beaches providing arguably the warmest and most accessible ocean waters in all of Northern California, and with the large population centers of the San Francisco Bay area and the Silicon Valley nearby, this type of resource pressure is particularly evident in coastal Santa Cruz County.

Davenport Area

The proposed development is located in the unincorporated Town of Davenport, approximately ten miles

[2] Census data from 1970 shows Santa Cruz County with 123,790 persons; California Department of Finance estimates for the 2000 census indicate that over 255,000 persons reside in Santa Cruz County.

north of the City of Santa Cruz. Davenport is a small coastal enclave in Santa Cruz County's North Coast planning area and is the only concentrated development area along Highway One between Santa Cruz and Half Moon Bay. This larger stretch of California's coastline is characterized by lush agricultural fields and extensive State Park and other undeveloped public land holdings. Davenport provides a convenient stopping place and a visitor destination for travelers along this mostly undeveloped coastline.

Proposed Development Site

The project is located at the intersection of Old Coast Road, Davenport Avenue, and Highway One in Davenport. The project is located on a "gateway" site on the inland side of Highway One as one enters Davenport headed north, and is an important site in this respect for Davenport's character as well as the character of the overall Highway One viewshed. The roughly one acre parcel includes a mostly level bench area (roughly a quarter acre) covered in weedy vegetation and including several large eucalyptus trees, bordered by a steep riparian woodland area that dominates the remainder of the site as it slopes away from Old Coast Road towards the southeast. The edge of the riparian woodland is roughly located along the break in slope below the bench area, and is comprised primarily of willows. The riparian area extends down to a lower bench area above San Vicente Creek at the end of Fair Avenue, and drains through a highway-side woodland to the Creek itself to the southeast. The upper bench area is currently partially occupied with a deteriorated and weathered redwood-clad barn, no longer in use, that has been at this location since 1925. The barn apparently originally housed a box making business, but this use has long since been abandoned and the barn has been unoccupied for decades, perhaps nearly as long as it has been in existence.

See exhibit B and C for graphics showing the subject site in relation to the various features described above.

B. Project Description

The Applicant proposes to demolish the existing barn, remove a 5-foot diameter and approximately 70-foot tall eucalyptus tree, and to construct a new 3-story commercial and residential (2 residential units) structure with wrap around decks slightly inland from the current barn's location. A 10-space parking lot would be constructed on that side of the property currently occupied by the barn (and nearest Highway One), and landscaping, pathways, patios, and associated fencing would be installed. See exhibit D for the proposed project plans.

5. Coastal Development Permit Determination

A. Applicable Policies

LCP policy areas applicable to the proposed project include those involving the protection of riparian corridors, ESHA, Highway One and Davenport viewshed, Davenport's community character, Highway One and Davenport public access and circulation, water quality, water supply, wastewater disposal, and

San Vicente Creek. Within these general issue areas, there are a large number of individual LCP policies that are applicable. Part of the reason for this is because the range of coastal resources involved (i.e., ESHA, public access and recreation, water quality, water supply, viewshed/character, etc.), and part of the reason is because of the way the certified LCP is constructed where there are a significant number of policies within each identified issue area, and then other policies in different LCP issue areas that also involve other issue areas (e.g., habitat policies that include water quality requirements, and vis versa). In addition, there are a number of Davenport specific policies because the town is an LCP-designated Coastal Special Community. In terms of habitat resources, there are also two zoning chapters that include requirements for protecting streams, riparian corridors, and ESHA.

For brevity's sake in these findings, applicable policies are shown in exhibit M, and are incorporated by reference into these findings. Specific application of the most pertinent LCP policies to this proposed project is discussed below.

B. Analysis of Consistency with Applicable LCP Policies

As detailed below, the proposed project raises a variety of LCP issues.

1. Riparian Corridor Protection

LCP Requirements

The LCP designates the on-site riparian woodland as ESHA as that term is understood within a Coastal Act context (LUP Policy 5.1.2(i) and 5.1.3, IP Chapter 16.32).[3] The LCP defines riparian woodland as a type of riparian corridor and protects these ESHAs from development impacts by, among other things, requiring a 50-foot buffer and a 10-foot setback from the buffer (a total of 60 feet) (LCP policies including LUP Policies 5.1 and 5.2 et seq, and LCP Zoning Chapters 16.30 and 16.32). Exceptions to the riparian setback requirements are only allowed under very limited circumstances, and are subject to making specific exception findings (IP Sections 16.30.060). The LCP indicates that development of riparian corridors should be avoided "to the greatest extent allowed by law" (LUP 5.2 Program a). See exhibit M for applicable LCP policies.

Development Adjacent to and in Riparian Corridor

The proposed project includes a parking lot, a 3-story structure, and associated hardscape within the required riparian woodland setback/buffer area; with setbacks of 0' for the parking lot, about 32 feet for the main building, and about 20 feet for the associated hard patio area (see annotated site plan on page 2 of exhibit D). A discharge pipe would be placed within the riparian woodland itself (extending from the edge of the plateau to the base of the riparian slope). Since the site is currently unused and has been for many years, the project will introduce significant new residential and commercial structures, noise, lights, activities, and runoff immediately adjacent and into the riparian corridor. The purpose of the LCP-required 60-foot buffer is to help reduce these types of edge effects on the existing riparian corridor (see

[3] That is, the LCP cross-references the Coastal Act's ESHA definition and application when defining these areas as Environmentally Sensitive Habitats and ESHA in LUP Policy 5.1.3 and IP Section 16.32.040.

also below).

The Applicant contends that the riparian woodland is not of high resource value, and has submitted a biological assessment and a hydrological assessment.[4] Based on these reports, and because he also contends that there are no alternatives available that can respect the required riparian setback, the Applicant asserts that a reduced setback is warranted and should be granted to allow for his proposed project.[5]

Commission biological and planning staff have reviewed the Applicant's reports, have visited and assessed the site, and have concluded that: (1) the riparian woodland is a valuable ESHA resource worthy of the LCP protection prescribed for it; and (2) an exception to the riparian setback requirement may not be appropriate to allow for the proposed project, as follows.

Riparian Woodland is a Valuable ESHA Resource

The riparian woodland occupies roughly ¾ of an acre on this site and is functionally connected by a band of willow riparian woodland to the larger San Vicente Creek corridor adjacent to the southeast. San Vicente Creek is widely recognized as a critical habitat for such State and Federally listed species as coho, steelhead, and California red-legged frog (CRLF);[6] all of these species are present within the Creek proper and at the intersection of it with Highway One immediately southeast of the site.[7] The riparian woodland serves as both a wildlife corridor and refuge extending from this site to San Vicente Creek. In addition to other species that may be present, the California Department of Fish and Game (CDFG) and the County both concluded that CRLF could be expected to migrate from the Creek through the riparian corridor and across the project site; CDFG further recommended that consultation with United States Fish and Wildlife Service (USFWS) regarding impacts due to the proposed project was warranted in this case (although there is no evidence in the record to indicate whether USFWS was consulted). The County concluded that the riparian corridor was ESHA. The Commission's biological staff have assessed the site and have concluded that the riparian corridor is a valuable resource worthy of the LCP ESHA protection prescribed for it, the purpose of which is "to preserve, protect, and restore" resources associated with the corridor.[8]

The Applicant's consulting biologist agrees that riparian habitat value in general is "among the highest of all plant communities in California, supporting a greater abundance and diversity of wildlife (especially bird species) than other habitats" whose "importance…is further underscored by its limited statewide

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[4] Riparian Hydrology Evaluation by Kittleson Environmental Consulting (dated January 17, 2003) and Biological Assessment by Bryan Mori Biological Consulting Services (dated January 15, 2003).

[5] See exhibit F for the Applicant's January 28, 2003 submittal, and see exhibit G for Commission staff's response to it. Both of these exhibits were considered by the Commission at the February 6, 2003 substantial issue hearing for this matter.

[6] California red-legged frog are Federally listed as a threatened species and State listed as a special concern species.

[7] San Vicente Creek proper is located roughly 275 feet southeast from the project site (and roughly 400 feet from the plateau area). The larger San Vicente Creek riparian corridor (that frames the Creek proper) is located roughly 100 feet southeast of the project site, and roughly 225 feet from the plateau area where development is proposed.

[8] Note that in addition to protection of existing resource value, the LCP indicates that restoring riparian corridors (including enhancing or bringing back value) is also a stated purpose of the ordinance. See LCP Chapter 16.30, including section 16.30.010 (Purpose).

distribution." Although the consulting biologist subsequently downplays the value of the riparian habitat in this case, he does indicate that this woodland is expected to support a variety of nesting birds, including perhaps nesting habitat for riparian-obligate species (such as Swainson's thrush and yellow warbler), and that species richness and abundance may be greater during spring and fall migration when migrating bird species are likely to inhabit the woodland.[9] He also includes a series of mitigation recommendations to address impacts to CRLF, San Francisco Dusky footed woodrats (a State species of special concern), and nesting birds (including species protected by the Migratory Bird Treaty Act) in the riparian corridor. CDFG likewise suggested mitigation for CRLF in this project.[10] The County required that an exclusionary fence be installed along the edge of the plateau so that CRLF moving through the riparian corridor would be blocked from traversing the plateau area (where the main development is proposed) during construction. The fact that such listed species mitigation measures have been required and/or recommended is an indicator that the riparian corridor has a high resource value, and certainly supports application of the LCP's setback requirements to it in order to preserve and foster this resource.

In addition, the Applicant's consultants base much of their riparian corridor resource value assessment on the lack of surface water on the Applicant's site. However, surface water is but one indicator of a riparian corridor. The presence of the willow riparian woodland is indicative of hydrology of some sort (or else the willows wouldn't be there), most likely sub-surface hydrology if there aren't other above-ground indications. Moreover, in contrast to some of the Applicant's consultants' new assertions regarding surface water flows, the County's file on this project (including its environmental document) indicate that surface water from this site flows over ground through the riparian woodland and to San Vicente Creek (for example, see Applicant's drainage site plan on page 11 of exhibit D).

In sum, the riparian corridor represents a valuable biological resource. It is identified in the LCP as ESHA as that term is understood in a Coastal Act context. The LCP prescribes setbacks from it in order to mitigate for the harm and disruption to that resource due to proposed development.[11]

Project Impacts

The riparian corridor is a relatively undisturbed environment, home to any number of migratory, seasonal and year-round inhabitants (including apparently some State and Federally-listed endangered species) who are passing through, foraging, nesting, hunting, and resting in this area day and night. The increased human activity from the proposed project would be visible and audible within the riparian corridor. Since half of the proposed project is for residential use, and depending on the commercial hours as well, the noise, lights, and activities would be present (at varying levels) all times of the day and night and all year. There is also the potential for larger events (like residential parties, or commercial special events), when such activities and impacts would increase. In addition, the discharge pipe proposed for inside of the riparian woodland would both adversely impact wildlife during its construction, and permanently displace a portion of it where the pipe would be installed. Although the discharge pipe would likely

[9] His site visit evaluation in this case was done during winter.

[10] In a May 14, 2002 letter on the County's CEQA document; see exhibit K.

[11] See also exhibit F for the Applicant's January 28, 2003 submittal on this point, and exhibit G for Commission Staff's response to it. Both of these exhibits were considered by the Commission at the February 6, 2003 substantial issue hearing.

become an inanimate, if unnatural, part of the riparian area over time (as vegetation grew to cover it), it would also potentially require future repair or maintenance of some sort that could displace any such vegetation camouflage and have its own riparian corridor impacts.

The introduction of a commercial and residential use of the magnitude proposed right up to the edge of the riparian corridor would be expected to reduce the abundance and health of wildlife in the corridor due to the fact that there is no activity currently at the site (and hasn't been for many years) and the proposed project would increase noise, lights, and activities immediately adjacent to the riparian corridor and extending up to 3 stories. The proposed building elevation facing the riparian corridor has not been configured to screen the corridor in any way (rather it would include many residential and commercial windows, decks, and doors), and the parking lot would extend directly adjacent to the corridor. The project includes a 6 foot high fence and stucco wall along the majority of the break in slope at the southeast edge of the plateau that will help to reduce impacts a limited degree, but it does not provide the level of buffering that the required setback does.[12] In fact, the fence/wall would be located at a lower elevation than the rest of the proposed site development area, and at a much lower elevation than the 3rd story of the building, and any screening that it might provide is corresponding reduced because of this; the fence would also be at a lower elevation than would the riparian corridor canopy. Such fences are typically placed along the development side of the required buffer (and not at the habitat's edge as proposed here).

The function of the existing riparian corridor buffer (i.e., the riparian corridor and its buffer together currently provide for wildlife movement) would cease because the plateau would be replaced by urban development and fenced. Over time, this would be expected to result in a decrease in the area of the riparian corridor, as a new 'buffer" area edge to it establishes over time and a new equilibrium between the riparian corridor and the urban use is established. Any animals using the existing buffer area (birds, CRLF, Dusky footed woodrats, etc.) would thus be further confined into the downslope riparian woodland, crowding wildlife already present there and potentially leading to displacement if carrying capacity is exceeded. In addition, within the then confined riparian woodland area, the expected additional noise, lights, and activities due to the proposed project could cause many of the birds and animals to leave altogether. For the species not displaced entirely, resting wildlife would expend energy on wasted alarm movements in response to the human activities. Such energy is at a premium if predators are present, and even more at a premium during breeding season when the birds and animals are maintaining nests and territory, as well as foraging and feeding young. The wasted energy could have a detrimental effect on reproductive success and behavior, as well as the loss of foraging time and/or breeding interaction. The cumulative effect of constant impacts (such as nighttime lighting) and multiple impacts from human noises, lights, and activities – particularly stronger stimuli such as loud noises and fast movements – would lead to decreased wildlife abundance and vigor in the riparian woodland.

[12] Note that the wall/fence was required as a sound barrier to reduce Highway noise as heard by users of the proposed facility. It was not designed nor intended as a barrier to reduce project activity from being heard and seen by wildlife within the riparian corridor, although it would perform a limited function in this sense. It is also possible that the fence/wall could act to amplify Highway One noise within the riparian corridor, although this was not evaluated in the Applicant's noise analysis (nor were any impacts of noise on wildlife receptors in the riparian woodland evaluated).

In addition, the site is currently almost exclusively pervious, with the exception of the existing barn's approximately 2,600 square foot footprint. The proposed project would include roughly 7,000 square feet or more of impervious surface (nearly tripling the amount of impervious surface on the site). The additional area that would be covered in impervious surface functions as a recharge area of sorts – potentially a significant recharge area for the willows in the riparian corridor if subsurface hydrology is their primary water source (and not over ground, as discussed above).[13] To the extent that groundwater supports the willow riparian community (less so than surface flows), the reduction in recharge area would be expected to reduce the amount of water available to support the willows, and to correspondingly reduce the size, extent, and health of the riparian habitat associated with them. Coupled with both the displacement of the existing corridor and the introduction of project noise, lights, and activities into the required buffer and the riparian woodland, the result would be riparian habitat degradation on site. Because the riparian corridor on site extends off site to San Vicente Creek, the larger riparian corridor resource as a whole (i.e., the Creek corridor and the finger extending from it onto this site) would likewise be degraded.

Water quality impacts, are detailed separately in finding 4 that follows.

Buffers/Setbacks

Buffers, such as the 60 foot buffer required by the LCP in this case, function as important transition zones between development and adjacent habitat areas, serving to protect the habitat from the direct effects of nearby disturbance. Buffer areas provide protection for habitat from adjacent development in a number of ways (e.g., sheer distance, buffer configuration, topographic changes, vegetation in the buffer, fences at buffer edges, etc.), where the methods chosen depend in part on the desired functions of the buffer (e.g., reducing human impacts, preserving habitat, water quality filtration, etc.). When intensive urban uses are proposed adjacent to habitat areas (such as the commercial and residential project in this case), a primary buffering method is to provide adequate distance so as to limit direct contact and reduce the conveyance of human-generated impacts (such as noise, lights, movements, odors, debris, and other edge effects); substantial vegetation planted or present within the buffer can help to reduce the absolute distance necessary for the buffer width.

Depending upon their design, buffers can also be a functional part of the ESHA acting as a transition zone from the more sensitive to less sensitive parts of a site. Moreover, species numbers of both plants and animals increase at buffer edges, due to the overlap from adjacent habitats and the creation of unique edge habitat niches. In addition, buffers can reduce the velocity of surface runoff from adjacent development and provide an area for infiltration of runoff, removing particulate contaminants and protecting against sedimentation and erosion in the ESHA itself. Similarly, these areas can increase the retention period of water in the adjacent riparian area by increasing local groundwater recharge through percolation.

By minimizing disturbance to the resource from adjacent development, and by providing transitional habitat areas, buffers contribute to the health and vitality of functioning habitat areas such as the riparian

[13] Note that the southeastern half of the site (containing the riparian corridor) is mapped as a Groundwater Recharge Area by the County LCP.

woodland in this case.

While there is widespread acceptance of buffers as a tool to reduce impacts on habitat resources, there is a wide disparity in accepted buffer distances, oftentimes predicated on the value and sensitivity of adjacent resources, as well as the intensity of adjacent development. Buffer widths found to have been applied in a Monterey Bay region study done for the Coastal Commission ranged in size from 30 to 600 feet.[14] These results are corroborated by a similar literature review study in which found appropriate buffers ranging in size up to about 650 feet.[15] The widest buffers were found to be necessary for high value systems that were adjacent to intense land uses. Of the multiple functions of buffers, the widest buffer widths were directly correlated to the function of preserving species diversity. As an example, the study found that bird species diversity, richness, relative abundance, and breeding numbers were found to be positively correlated with buffer size. Similarly, this study identified an inverse relationship between buffer width and degree of impact from human disturbance. As an example, the study indicated that a heavily forested 100-foot buffer distance would be necessary to reduce the noise of a commercial area to background levels. While acknowledging the range of buffer distances studied, the study concluded that a buffer of at least 50 feet was found to be necessary under most conditions.

Riparian Exception

Although the proposed project would result in direct impacts to the riparian habitat on the site, the LCP does allow for reductions in required buffers if certain findings can be made. The Applicant contends that an exception is appropriate in this case, primarily based on the lack of space available outside of the riparian corridor and its buffer to construct his proposed project. However, the Applicant's argument is backwards in many ways because the intent of the exception policy is not to justify whatever an applicant proposes, but rather to balance any special site circumstances against LCP requirements – and ultimately to evaluate whether there are less environmentally damaging feasible alternatives that can respond to site specific constraints and circumstances. In addition to the prescribed 60 foot buffer in this case, the LCP is also directive in terms of buffer size and function adjacent to ESHA. The LCP requires that any development adjacent to the riparian corridor "maintain or enhance the functional capacity of the habitat," and that where this cannot be accomplished, the LCP requires such projects to be redesigned and reduced in scale (LUP Policy 5.1.6). In any case, the LCP requires that "structures shall be placed as far from the habitat as feasible" (LUP Policy 5.1.7).

In this case, there may be other feasible alternatives that respect the required buffer (see also finding 7 below), although these alternatives would require changes to the applicant's design. For example, roughly 1,000 square feet of the existing barn footprint (or about 40%) is located outside of the required buffer (see exhibit H). The topography slopes towards the riparian corridor within this footprint area; a front to back differential of roughly 6 feet in elevation (see side view of barn in this area on page 5 of exhibit c). It would be feasible to develop a commercial structure within that portion of the existing profile of the barn

[14] As detailed in "Wetland Buffers in the Monterey Bay Region: A Field Study of Function and Effectiveness," Rosemary Dyste, December 1995. Although this 1995 report focused on wetland buffers specifically, the methodology for determining buffer widths and measuring their effectiveness is applicable to riparian corridors as well.

[15] As detailed in "Wetland and Stream Buffer Size Requirements – A Review" (Castelle, Johnson, and Conolly), *Journal of Environmental Quality* (September – October 1994).

located outside of the required setback. Such a structure could have up to an approximate 1,000 square foot footprint, and could include a partial (due to slope change in this area) to full (with some excavation) lower story, resulting in up to about 2,000 gross square feet.[16] Assuming 400 square feet for storage and loading, such a commercial use might require up to 8 parking spaces per the LCP.[17] In this case, 8 parking spaces could probably be constructed inland of the barn footprint and outside of the riparian corridor setback in at least two different configurations; one where there was an access driveway with parking spaces tucked against a retaining wall at the property line, and another where parking spaces would be provided directly off of Old Coast Road supported on a fill slope or elevated on caissons.[18] The fill slope could be vegetated appropriately, and/or the retaining wall/elevated structure could be screened with cascading vegetation. In any case, the spaces would be located as far from the riparian corridor as feasible, while also avoiding the removal of significant trees. In addition, it is possible that all or some project parking could be supplied within the currently unpaved portion of the Old Coast Road right-of-way, if this street edge were improved, and depending on the intensity of use and the parking requirements associated with it. Such a development alternative represents a feasible use, albeit much smaller than that proposed (including omitting the 2 residential units), consistent with providing for a commercial use principally permitted per the underlying commercial zoning.[19] This alternative shouldn't be considered the only alternative that could be developed, but it is an example of the type of alternative that could be pursued, and is probably roughly indicative of the scale and intensity of such alternatives that could be developed outside of the riparian corridor buffer on this site. See exhibit H for a graphic depiction of these areas in relation to the site.

However, in evaluating the feasibility of alternatives to this project, the County of Santa Cruz found that "[i]f no development was allowed within the 50-foot buffer area it would be practically impossible to develop any kind of commercial use on the property."[20] Looking at the circumstances of the site overall, this finding is not unreasonable and, in conjunction with the Commission's findings below concerning the scale of the project, the Commission finds that the Applicant's proposal to vary the riparian setback in this case is appropriate. Given the proximity of the project to the riparian area, though, conditions are necessary to protect against water quality impacts, potential impacts to red-legged frog, and other riparian

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[16] The 2,000 square foot area so described should be understood as a maximum. The square footage might need to be reduced to address design articulation issues (so that it is not a 2 story square box), to address special setback concerns (like Highway One adjacent), or topography. The point is that there is some amount of space that could be used to develop a commercial structure in this part of the site, and that such a structure at such a location could contain up to 2,000 gross square feet, although it is likely to be somewhat less (perhaps 1,500 square feet). The particular square footage figures are not critical for establishing that an alternative could be constructed at this part of the site. They would be critical if this alternative were to be pursued further, and would be further fleshed out in such a process. That said, in order to assess parking requirements associated with such an alternative footprint, the discussion that follows uses 2,000 square feet in order to identify the worst-parking case (i.e., most parking spaces required) scenario.

[17] LCP section 13.10.552 specifies 1 parking space per 200 square feet of retail. This ratio is generally indicative of commercial parking requirements in the LCP. Some commercial uses, such as restaurants, require more parking spaces (1 per 100 square feet plus 0.3 per employee), and some require less (e.g., art galleries require 1 per 300 square feet). IF there is lesser square footage (like 1,500 square feet), the amount of parking spaces would decrease.

[18] Note that the Commission's Senior Engineer has evaluated these options and visited the site and deemed them feasible.

[19] Note that roughly half of the proposed project square footage and other facilities (e.g., parking) is to support the two proposed residential units, and not to support any principally permitted commercial use on the site.

[20] Santa Cruz County Riparian Exception Findings, Application 98-0234; see exhibit N.

values (see special conditions). Specifically, the area of site disturbance is limited to the plateau area of the site, lighting is minimized and directed away from the riparian woodland area, drainage apparatus is kept out of the riparian corridor (see also below and water quality findings), permanent CRLF barriers must be installed at the edge of the plateau area, and invasive landscaping is prohibited (see special condition 1). Construction measures are required to avoid take of red-legged frog (through constructions fencing and surveys by a biological monitor), to avoid erosion, sedimentation, and runoff into the riparian corridor, to minimize other construction impacts on riparian values (such as noise and lights) to the degree feasible, and to require consistency with the Applicant's biological assessment (see special conditions 2 and 3). To mitigate for the unavoidable impacts associated with approving the project within the specified buffer area (as discussed above), mitigation is prescribed to implements a native landscape restoration plan outside the area of site disturbance (see special condition 4), and to prohibit other development of this area (see special condition 5).

Pipe in ESHA Prohibited

The LCP does not allow for non-resource dependent development within the riparian woodland ESHA, except in very limited circumstances (LCP policy 5.1.3).[21] The drainage pipe proposed for inside of the riparian woodland would adversely impact wildlife during its construction (and any subsequent repair and/or maintenance), permanently displace a portion of it where the pipe would be installed, and deliver partially-filtered polluted runoff into the ESHA (see finding 4 that follows for additional detail on water quality impacts). The proposed project pipe does meet the limited exception criteria and cannot be found consistent with the LCP. Special condition 1 prohibits the placement of the drainage pipe within the riparian ESHA, and requires a drainage system that can be developed outside of the willow riparian woodland area.

2. Davenport's Community Character/Highway One Viewshed

LCP Requirements

The Santa Cruz County LCP is highly protective of coastal zone visual resources, and specifically protective of the views available along Highway One as it winds through the County from the San Mateo to Monterey County lines. The LCP states that the public vista from Highway One "shall be afforded the highest level of protection" (LCP Policy 5.10.10). Development is required to be sited outside of the Highway One viewshed if it is feasible; where development is "unavoidably visible," siting and design mitigation measures are required to protect the viewshed, and the unique characteristics of it that make it a scenic resource in the first place (in this case, primarily the Davenport community aesthetic (LCP Policy 5.10.11). This section of Highway One is also specifically identified as eligible for official designation as part of the California Scenic Highway Program. In sum, the north Santa Cruz coast area, including Davenport, represents the grandeur of bygone (in many places) agrarian and wilderness California and is a critical public viewshed for which the LCP dictates maximum protection.

The LCP likewise is protective of the Town of Davenport, calling out this enclave as a "Coastal Special

[21] Exceptions are allowed only when there is a beneficial public purpose, there are no other feasible alternatives, all adverse impacts are mitigated, there is a takings issue, and it is consistent with the LCP's ESHA-protective policies (see LCP Policies in exhibit M).

Community" due to its unique character and popularity as a visitor destination; new development is to be subservient to maintaining the community's character (LCP Policy 8.8.2). Within Davenport, all new development is required "to be consistent with the height, bulk, scale, materials and setbacks of existing development: generally small scale, one or two story structures of wood construction" (LCP Policy 8.8.4). The Highway One frontage is to be emphasized as both a rural community center and a visitor serving area where site design is required to emphasize the small scale historic assets of the town (LCP Section 13.20.143(c)(1)(i) and (c)(2), LUP Program 8.8(a)). Davenport is a widely renowned whale watching and visitor destination that has been recognized within the LCP for its special community character – a character within which the subject gateway site plays an important role.

These LCP policies taken together require in effect that the impacts of new development in view of Highway One be minimized, and that new development in Davenport be designed and integrated into the existing community character and aesthetic (see applicable policies in exhibit M). The questions of "small-scale" and Davenport's "community character" are thus central to the Commission's review of this project.

Character/Viewshed Status

Davenport's tightly clustered residential and commercial development reflect the town's working heritage: whaling industry, agricultural shipping and processing, cement manufacture. In its layout and simplicity of architecture – devoid of pretense – Davenport is strongly reminiscent of other "company" mining or logging towns in the West. Today, the quarrying and processing of limestone for the manufacture of cement remain the economic backbone of the community. Some diversification is offered by small-scale artisan industries. More recently, the two-block commercial strip along the highway frontage continues the process of awakening to the opportunities afforded by the tourist industry.

Currently, the immense RMC Pacific Materials cement plant dominates Davenport. This huge industrial structure can be seen for miles and is in stark contrast to the rest of the town. In fact, notwithstanding the cement plant behemoth, Davenport's commercial frontage could be described as "eclectic frontier rustic" in character based on the variety of building styles, materials, and heights. Remodeling along the highway frontage has more recently injected a more finished facade as seen from the highway. See exhibit B for photographs of the Highway One frontage.

When evaluating the character of an individual development as it relates to other development in a community, a number of factors need to be considered, including structural proportions, layout, exterior finish and any architectural embellishments. Equally important are height, bulk, and other considerations of scale. Critical in this evaluation is the overall scale and intensity of use, because this also directly relates to the amount of square footage and area necessarily given over to parking.

The Commission has recently been directly involved with the last two commercial projects to be approved along Davenport's Highway One frontage where viewshed and character issues were engendered. These projects were the Bailey-Steltenpohl mixed use commercial project across Highway One and slightly upcoast of the site, and the Forester's Hall reconstruction on the inland side of Highway

One and about one block upcoast of the site.[22] In both of those cases, the approved development was required to essentially maintain the appearance of what was there before (in size, bulk, and exterior treatment) so as to maintain Davenport's character and the Highway One viewshed. In the Bailey-Steltenpohl case, the Commission prohibited development of the proposed parking lot, and required the approved development to occupy a slightly smaller footprint and profile than that that existed previously (i.e., the footprint and profile was required to be reduced slightly nearest the Highway). In the Forester's Hall case, the development replicated the historic Forester's Hall structure that had been demolished.

In this case, the existing barn has occupied this location for the better part of the last century. The weathered redwood-clad barn is immediately adjacent to Highway One and frames the gateway into Davenport as one enters the town headed north on Highway One (see photos in exhibit C). The existing barn is a mix of one (nearest Old Coast Road) and two stories, occupies a roughly 2,600 square foot area on the site and appears to be around 28 feet in height (see photos of barn in exhibits B and C). It has been abandoned and is falling down. Nonetheless, the rustic barn and surrounding riparian woodland vegetation help to define Davenport's character, and provide a connection to the town's historic past.

Changes Character at this Site

The Applicant's site is one of the most visually prominent parcels in Davenport and thus the visual impacts of the proposed project are of significant concern. The subject site is located at the southern end of Davenport and the existing barn as well as any replacement development signals the gateway to the small town of Davenport to northbound travelers on Highway One. The plateau portion of the site outside of the riparian woodland is completely visible from Highway One, and thus any development on it cannot be sited out of public view as directed by the LCP. Because of this, any development on this site that is "unavoidably visible" from the Highway must be scaled, sited and designed consistent with Davenport's character (see above LCP policy discussion; in particular LCP objective 5.10.b, and policies 5.10.3, 5.10.10, and 5.10.11).

The Applicant proposes to demolish the barn, remove a 5-foot diameter and roughly 70-foot tall eucalyptus tree, and construct a new building and parking lot on the site. The new main building that would be constructed on the site would occupy a footprint of roughly 2,200 square feet, and would have an overall bulk, including decks, of roughly 6,400 square feet.[23] The structure would be 3 stories.

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[22] A-3-SCO-98-101 and A-3-SCO-00-106, respectively, both heard by the Commission in 2000.

[23] Note that there has been confusion over the amount of square footage proposed. Part of the reason for this is because the project includes a substantial area of wrap-around decks (and covered walkway/outdoor space for the 1st floor). Interior space proposed is 4,316 square feet. Decks and covered walkway/outdoor space proposed is 2,084 square feet. The style of the wrap around decks proposed are such that they contribute significantly to the sense of bulk proposed. Therefore, in order to give a sense of numerical magnitude to the proposed project bulk, the covered walkway/outdoor space area surrounding the first floor (812 square feet) was added to the first floor interior space (1,420 square feet) to arrive at a gross structural footprint of 2,232 square feet, and the interior square footage (4,316 square feet) was added to the exterior decks and covered walkway/outdoor space square footage (2,084 square feet) to arrive at a bulk estimation of roughly 6,400 square feet. This is different than, and can be differentiated from, interior square footage. In this calculation, the separated 3rd story balcony of 40 square feet on the northeast side of the building was not included, nor was the covered trellis on this elevation, because they lack the substantial design elements of the other wrap-around areas, they do not extend through the 2nd floor, and do not lead to the same degree of perceived mass as a result. See approved plans in exhibit D. See also Applicant's January 28, 2003 submittal and Commission Staff's response to it regarding this point (exhibits F and G respectively).

Although the submitted plans show the maximum height to be roughly 37 feet, the Applicant has clarified that the proposed maximum height of the building will be 32.4 feet.[24] The building would be faced with stucco on the first floor, and clad with redwood board and bat for the top two floors. The parking lot area would occupy approximately 4,700 square feet immediately adjacent to the Highway. A six-foot high fence would be constructed along the break in slope at the southeast edge of the plateau, transitioning into a 6-foot high stucco wall for that portion due west of the proposed building extending approximately 200 feet towards Old Coast Road (see exhibit D). Although the fence would be partially screened from view by the riparian corridor (in northbound views) and slope change (in southbound views) it would still introduce a structure where none exists now, particularly the stucco wall portion of it.

The Applicant's photo simulations and the photos of the project staking required by the County give a general sense of the area that would be occupied by the proposed main structure (see exhibits C and E). The staking and photo simulations do somewhat underestimate that change proposed because: the project staking did not include all structural elements (such as all wraparound decking) and was keyed to a lesser height than that shown on the proposed project plans; the photo simulations omit vehicles parked in the large parking area that would be a dominant visual element immediately adjacent to the Highway; and neither include the 6 foot stucco wall/fence along the plateau's edge. Nonetheless, the simulations suggest that the project would not be out of scale or out of character with Davenport.

Although three stories have been approved by the County, when the applicable LCP policy states "require new development to be consistent with the height bulk, scale, materials and setbacks of existing development: generally small scale, one or two story structures of wood construction," the proposed building is well designed and again, based on the Applicant's simulations, does not appear to out of scale with the area, particularly from the southbound view.[25]

Conclusion

The existing weathered and rustic barn helps to define Davenport's character and the Highway One viewshed. Removing it and replacing it inland with a larger and taller structure of a different design will definitely alter the character of the town. Still, the proposed main structure is not too large for the site and Davenport; although it is taller and bulkier than the existing barn and located in a portion of the site that would increase massing visible in the Highway One viewshed, particularly the northbound view corridor where it would be clearly visible due to its direct exposure, it is well designed. The proposed parking lot would be constructed along the Highway frontage in the same general area as the existing barn but in a larger footprint (nearly double the footprint of the barn), at roughly the elevation of the Highway. Although

[24] Again, there has been confusion on the overall height proposed. The proposed project plans show the height to be in excess of 35 feet, with a maximum grade to pitch height of 37 feet (see approved plans in exhibit D). In the time since this item was appealed, the County subsequently indicated that the Applicant agreed to lower the height 32.4 feet; that this lower height is what is shown on the project flagging, staking, and photo simulations (see exhibits C and E); that it was the lower height that was reported to the Planning Commission when they approved the project; and that although there was no written condition or requirement, that the County would enforce the lower height through their coastal permit (personal communication from County planning staff). At the Commission's June 11, 2003 hearing, the Applicant indicated that the maximum height proposed is 32.4 feet.

[25] Other than the cement plant itself, there are no 3-story structures in Davenport. In fact, the overwhelming majority of structures in Davenport are 1-story. Even along the main Highway One commercial frontage, where one might expect larger commercial buildings, there is a fairly even mix of both 1-story and 2-story structures (see exhibit B).

the parking lot would introduce a formal paved area and a strip of parked cars at this gateway location into Davenport that would be in the Highway One viewshed, there is currently a barn in this location.[26] The 70-foot tall, 5-foot diameter eucalyptus that would be removed has a towering canopy and its removal will leave a hole in the canopy not only at this site but in terms of framing the town itself from the northbound Highway One vantage point.[27] Overall, to assure the consistency of the project with the LCP, revised plans are necessary to show the actual proposed height of 32.4 feet consistent with the LCP's height measurement methodology,[28] and to ensure that the new building's roof pitch matches that of the existing barn as proposed by the Applicant (and isn't flattened to achieve the 32.4 foot maximum height) (see special condition 1).

3. Highway One/Davenport Traffic and Circulation

LCP Requirements

Santa Cruz County's north coast area is a stretch of mostly undeveloped Central Coast that represents the grandeur of a bygone (in many places) agrarian setting and coastal wilderness California that attracts visitors to it. Davenport itself is an important visitor destination; its proximity to Santa Cruz heightening its appeal in this regard. Highway One is the primary (and in some places only) means of travel on the north coast, and is thus widely used by visitors and those otherwise seeking to enjoy the region's coastal resources.

The LCP contains a series of interwoven policies which, when taken together, reinforce and reflect the Coastal Act mandate to maximize public access and recreational opportunities, protect existing public access and encourage public access and recreational enhancements (such as public parking, trails, and other facilities) to increase enjoyment of coastal resources and to improve access within the coastal region (LCP Chapters 3 and 7). The LCP also targets Davenport for specific enhancements, such as clear parking and circulation (including IP Section 13.20.143 et seq). The LCP establishes a priority of uses within the coastal zone where recreational uses and facilities are a higher priority than residential uses, and the LCP prohibits the conversion of a higher priority use to a lower priority use (LCP Policy 2.22 et seq); in road improvement projects, priority is given to providing recreational access (LCP Policy 3.14 et seq). Existing public access use is protected (LCP policy 7.7.10). See exhibit M.

Highway One Davenport Frontage

Highway One is currently a two-lane road through Davenport. The project is located at the inland corner of the intersection of Highway One with Davenport Avenue and Old Coast Road; the first Davenport streets that are encountered when traveling along northbound Highway One. This intersection is oddly

[26] In the Bailey-Steltenpohl project, the Commission found that the siting of a parking lot immediately adjacent to the Highway One corridor was intrusive and not in keeping with the character of Davenport. Parking for that project was reduced and relocated to a less visible portion of the site. Although such a reduction and relocation is feasible and might be appropriate here, it is not necessary for LCP consistency.

[27] See page 3 of exhibit c for a photo of the tree to be removed.

[28] The LCP measures building height from existing or finished grade, whichever is lower, where the height limit established mimics the contour of existing and/or finished grade.

configured in that both Davenport Avenue and Old Coast Road meet Highway One at roughly the same point on Highway One (see exhibits A and D). As a result, the intersection is confusing for vehicles both turning onto and off of Highway One.

Davenport's two-block main commercial frontage is located just past the project intersection to the north. The area between the Highway travel lanes and the main commercial buildings inland is used primarily for perpendicular parking adjacent to the Highway. There are no stoplights or stop signs along Highway One through Davenport. Visitors park along both sides of the Highway and access businesses on the inland side as well as the bluffs and beach on the seaward side of the Highway. As a result, there is substantial ingress and egress onto the Highway through the town, and there is also substantial pedestrian crossing of the Highway. Highway One crests in elevation roughly in the center of the main commercial strip. These factors together create an awkward, and potentially dangerous, circulation situation within the Highway through the town that already affects public access to Davenport and along Highway One. In referring to this main Highway One frontage, the Applicant's consulting traffic engineer concludes that "the existing parking configuration and circulation presents operational and safety deficiencies."[29]

Project Intersection with Highway One

The proposed project would introduce new commercial and residential uses that would result in new trips to and from the project site. Such trips would be almost exclusively through the already confused Davenport Avenue and Old Coast Road intersection with Highway One. The Applicant's traffic analysis indicates that there wouldn't be any adverse impacts on traffic and circulation in Davenport, and Caltrans, after several years of raising concerns, recently concurred.[30] Although some questions remain that should be addressed through any relevant project mitigations, the Commission relies on the latest evaluation and conclusion of Caltrans that there are no significant circulation concerns raised by the project.[31]

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[29] Higgins and Associates January 24, 2003 report. Note that their reference to operational and safety deficiencies was made in 1996. Since that time, there have not been any major changes to the Highway and/or parking along it. However, traffic on the Highway has increased, Davenport's lure as a visitor destination has also increased, and two new commercial operations were approved by the Commission in 2000 that, when constructed, will increase visitor trips and stops in this main frontage.

[30] Note that Caltrans repeatedly informed the Applicant that the proposed project's traffic issues with respect to the intersection were inadequately addressed (in letters dated June 20, 2000, March 7, 2001, and October 5, 2001). Caltrans retracted their concerns by letter dated January 31, 2003 after this matter was appealed to the Commission and based on the Applicant's January 24, 2003 traffic analysis. Caltrans also reiterated their finding "that the project will not result in any significant adverse traffic impacts to Route 1" by letter dated June 5, 2003. See Caltrans comment letters in exhibit L.

[31] Based on Caltrans review of the project, the Commission presumes that several project issues either aren't significant and/or are being addressed by Caltrans in their capacity as the manager of the Highway One corridor. In mitigating the project it will be important in this regard to account for the fact that the Applicant's traffic analysis submitted to Caltrans appears to underestimate traffic associated with the project and is itself based on an outdated report that is not indicative of the traffic at this intersection. The Applicant's traffic analysis is based upon the project providing 1,420 square feet of retail commercial space. However, the proposed project includes roughly double this amount of commercial retail square footage (estimated by the County to be 2,896 square feet of commercial space with 816 square feet of that for commercial decks). The Applicant's traffic analysis is also based on a 1996 traffic report done in support of the proposed Bailey-Steltenpohl project across the street. All traffic associated with the Bailey-Steltenpohl project will be directed to the project intersection that would be used by this project – this is not reflected in the Applicant's traffic analysis. The project intersection is expected to change soon because the permittee in the Bailey-Steltenpohl case is also working with Caltrans on potential Caltrans-required turn channelization lanes (in both directions) within the Highway right-of-way; these changes within the Highway prism, and their potential for further exacerbating conditions at the project intersection, were not accounted for in the Applicant's traffic analysis. Finally, the proposed project's parking lot is

4. Water Quality

LCP Requirements

The LCP protects the water quality of the on-site riparian corridor, San Vicente Creek, and the Monterey Bay (including the aforementioned LCP habitat policies and Policies 5.4 et seq, 5.7 et seq, and 7.23 et seq; see exhibit M). The project site drains down through the on-site riparian corridor to a bench area above San Vicente Creek (at the end of Fair Avenue), and then through a highway-side riparian woodland corridor to the Creek itself to the east, and ultimately from there onto the Monterey Bay (see page 11 of Exhibit D).

At a minimum, San Vicente Creek is known habitat for State and Federally listed coho salmon, steelhead salmon, and red-legged frog,[32] and the California Fish and Game Commission has designated San Vicente Creek as an endangered coho salmon spawning stream. The National Marine Fisheries Service (NMFS) indicates that San Vicente Creek is the southern-most creek where coho salmon is still extant in its entire North American range, and that protection of this creek is therefore of significant importance. CDFG echoes NMFS concerns in this regard, and have asked development not be approved without an understanding of such development's potential impact to San Vicente Creek.

Project Inadequately Protects Water Quality

The proposed project would collect site drainage, direct it through a standard silt and grease trap, then direct it through a pipe down through the riparian woodland to the base of the riparian slope where it would be outletted and expected to enter the highway-side corridor and then onto San Vicente Creek and the Pacific Ocean. Runoff from the site would be expected to contain typical runoff elements associated with urban residential and commercial development, including a parking lot. Urban runoff is known to carry a wide range of pollutants including nutrients, sediments, trash and debris, heavy metals, pathogens, petroleum hydrocarbons, and synthetic organics (such as pesticides and herbicides).[33] Urban runoff can

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also located extremely close to the project intersection and immediately adjacent to Highway One (see exhibit D). As a result, all vehicular access onto and off of Old Coast Road to the project site itself would be almost directly on top of the already constrained 5-legged intersection. This may present queuing problems on both directions of Highway One (from those drivers to the proposed facility attempting to access Davenport Avenue/Old Coast Road and the facility either via a hairpin northbound turn or an across the Highway southbound turn), and from those attempting to leave the proposed parking lot area (inasmuch as they must exit onto Old Coast Road and then immediately cross Davenport Avenue at the intersection with Highway One). These problems would be exacerbated because patrons of the proposed project would be expected to be visitors to Davenport unfamiliar with the strangely configured project intersection and how best to navigate it. Finally, the proposed parking lot would be located with a zero-foot setback from the Highway One right-of-way (i.e., although the plans show a 10 foot setback from the Highway One right-of-way, the Applicant indicates that the right-of-way line is incorrect on the proposed project and is actually roughly 10 feet inland from this identified line (personal communication from the Applicant to Commission staff on May 7, 2003). Should Highway One be expanded to the full extent of the right-of-way in the future, it would extend to the parking lot on this site. This approval is conditioned for an accurate identification of property lines in relation to the project, and permission from the underlying land owners for any development that extends onto their property (Caltrans for Highway One, and Santa Cruz County for Old Coast Road) (see special condition 1).

[32] Coho are State-listed as an endangered species and Federally listed as a threatened species, steelhead are Federally listed as a threatened species, and red-legged frog are Federally listed as a threatened species and State listed as a special concern species.

[33] Pollutants of concern found in urban runoff include, but are not limited to: sediments; nutrients (nitrogen, phosphorous, etc.); pathogens (bacteria, viruses, etc.); oxygen demanding substances (plant debris, animal wastes, etc.); petroleum hydrocarbons (oil, grease, solvents, etc.); heavy metals (lead, zinc, cadmium, copper, etc.); toxic pollutants; floatables (litter, yard wastes, etc.); synthetic organics (pesticides, herbicides, PCBs, etc.); and physical changed parameters (freshwater, salinity, temperature, dissolved oxygen).

also alter the physical, chemical, and biological characteristics of water bodies to the detriment of aquatic and terrestrial organisms. Pollutants in the runoff would be filtered to a degree by the silt and grease trap proposed. From the outlet point at the base of the riparian corridor slope, the runoff would also be bio-filtered to a degree by the riparian vegetation extending from the outlet point to San Vicente Creek.

The standard silt and grease trap proposed would act as small sediment and runoff holding basin, but is incapable of filtering and treating runoff to remove typical urban runoff pollutants. Although the trap proposed would perform a gross filtering function, the runoff that would exit from the trap would still be expected to contain pollutants of concern.[34] This partially filtered runoff would be directed to the riparian corridor below, where additional pollutants would settle out, and would ultimately make its way to San Vicente Creek and on to the Pacific Ocean.

The use of a standard silt and grease trap to adequately protect riparian woodland ESHA and the ultimate receiving waterbodies from polluted runoff due to the project is inappropriate because such a unit is not sufficiently capable of removing typical runoff pollutants. In addition, relying on the riparian woodland ESHA to filter and treat pollutants due to the project is also inappropriate. It is incumbent upon the project to filter and treat its runoff *prior to* its delivery to either the riparian corridor (at the outlet point) or ultimately San Vicente Creek and/or the Pacific Ocean. At a minimum, urban runoff pollutants would be added into the riparian corridor downstream of the outlet pipe (between the pipe and San Vicente Creek); this ESHA area would be expected to suffer as a result. Depending on the degree to which the riparian vegetation neutralized these constituent pollutants, remaining pollutants would make their way into San Vicente Creek (and then the Pacific Ocean) and this ESHA would likewise be expected to suffer as a result.

In sum, the project would generate typical urban runoff (including in particular runoff including vehicular wastes from the 4,700 square foot parking lot proposed). That runoff would be directed to on and off site ESHA areas following only gross filtration at the silt and grease trap. In other words, the proposed project relies on the on and off site ESHAs to filter and treat typical pollutants generated by the project. These ESHAs would be degraded proportionally as a result. This is inappropriate and inconsistent with the LCP's ESHA and water quality requirements. Therefore, special conditions 1 and 2 are necessary for LCP conformance. Specifically, these conditions require that adequate construction BMPs are applied to prevent construction-related runoff and debris from degrading the riparian corridor and downstream resources (special condition 2), and permanent drainage BMPs are required to control the volume, velocity and pollutant load of stormwater and other runoff leaving the developed site and to ensure that: all site drainage features and/or structures (e.g., pipes) are confined within the disturbance area and are prohibited in the riparian woodland and its setback area; post-development peak runoff rates and volumes are maintained at levels similar to, or less than, pre-development conditions; all runoff is filtered and treated prior to its use for on-site irrigation or infiltration, or its discharge off-site; all vehicular traffic and parking areas on site are swept and/or vacuumed at regular intervals (and before and after the rainy season); spill response materials are maintained on-site; and all drainage system elements are permanently operated and maintained (see special condition 1).

[34] If the trap were not regularly maintained, then even its gross filtering capabilities would be negated.

5. Water and Sewer Service

In addition to the above-mentioned water quality and habitat LCP policies, the LCP designates San Vicente Creek as a Critical Water Supply Stream that is currently being used at full capacity, requires adequate stream flows to protect anadromous fish runs, including restoration of same if in-stream flows are inadequate for fisheries, and prohibits additional withdrawals of water from designated Critical Water Supply Streams (LCP Objective and Policies 5.6 et seq). The LCP requires that development be evaluated for its potential to impact water supply and wastewater systems, and that a commitment to provide water and wastewater services to the project be demonstrated (LCP Policies 7.18.2, 7.18.3, and 7.19.1). See exhibit M.

The approved project would require 3 new wastewater and 3 new water hookups (i.e., one for each of the 2 residential units and one for the commercial use) from the Davenport County Sanitation District (DCSD).

DCSD gets its water from RMC Pacific Materials which gets its water from both San Vicente Creek and Mill Creek. The State Water Resources Control Board recently completed an investigation of RMC's right to withdraw water from San Vicente and Mill Creeks that concluded, among other things, that RMC does not have a riparian right and appears to have only a partial appropriative water right (pre-1914) to divert water from the two creeks, that RMC appears to have diverted water in excess of the pre-1914 right, and that approximately 30% of the water diverted was spilled and not used for a beneficial use.[35]

As mentioned above, San Vicente Creek provides habitat for such State and Federally listed species as coho, steelhead, and red-legged frog. It is not clear at present time whether existing water withdrawals are leading to listed species habitat degradation, nor is it clear whether the additional water allotted to the proposed development in this case would exacerbate any such impacts or cause impacts of its own. In fact, the Commission is not aware of any comprehensive evaluations, whether in this project context or otherwise, of habitat impacts due to the RMC's water diversion activities on the San Vicente Creek.[36] That said, recent actions indicate the concern over this issue. For example, on the Trust for Public Land's (TPL's) Coast Dairies property surrounding Davenport (a property that includes in part San Vicente Creek), NMFS and CDFG this year have gone as far as to inform TPL that all agricultural diversions should stop immediately due to their harm to fisheries resources.

In terms of wastewater, the wastewater system in Davenport has limited capacity, and the amount of wastewater that can be treated at the current time appears to be tied directly to the amount of treated wastewater that can be used by RMC Pacific Materials in their cement plant operations. DCSD has recently raised concerns that any curtailment of production capacities for RMC could lead to overflow of wastewater from their sewage holding lagoon. The Commission is currently considering an appeal of a

[35] State Water Resources Control Board, December 27, 2001.

[36] Note that the State Board Investigation from December 2001 did not include such an evaluation, noting that such an evaluation was beyond the scope of that investigation due to limited State Board resources available to develop the required body of evidence. The State Board investigation did indicate, however, that if valuable public trust resources exist in a stream, if these resources are being adversely affected by diversions, and if modification to diversions would help alleviate such impacts (all of which may be the case for San Vicente Creek), then the Board can step in to reallocate water for beneficial uses.

County decision granting RMC a production increase, but this matter has not yet been resolved and it is unclear as to what effect it may have on water supply or wastewater treatment in Davenport (pending appeal A-3-SCO-02-088).

Conclusion

The larger issues regarding water supply/water withdrawal and wastewater capacity in Davenport are unresolved. That said, these larger issues are beyond the ability of this single applicant to resolve. In this case, the Applicant received the necessary commitment to serve the project from DCSD.[37] As such, the proposed project is consistent with the LCP's public service water and wastewater requirements. That said, to the extent the proposed project would exacerbate water and wastewater impacts, a project smaller in scope (and resulting in less water use/wastewater generation), would have a lesser impact in this regard.

6. Cumulative Impacts

The LCP requires that development not adversely affect, individually or cumulatively, coastal resources (LCP Policy 2.1.4 – see exhibit M), including the coastal resources thus far discussed in these findings. There are a number of commercial projects either permitted (e.g., the aforementioned Bailey-Steltenpohl and Forester's Hall projects) or pending (e.g., the aforementioned RMC Pacific Materials cement plant projects) in Davenport. All of these projects are either under construction (i.e., Bailey-Steltenpohl) or could be in the reasonably foreseeable future. Their combined effect on coastal resources when considered along with the proposed project could lead to cumulative impacts to the types of coastal resources detailed in the findings above. In particular, and probably of most direct relevance since the other permitted project's community character issues were resolved, Davenport's Highway One circulation (both through traffic and those visiting the town) could be cumulatively worsened by the contribution of this proposed project. As conditioned, however, cumulative impacts are not an issue with this project.

C. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The County, acting as the lead CEQA agency, circulated a proposed negative declaration under CEQA for the proposed project in April of 2002. Prior to that time, in early coordination with County staff,

[37] Note that this will serve was issued on April 29, 2002 and expired on April 29, 2003 (i.e., in the time since this matter was appealed to the Commission). That said, there is no evidence in the file to indicate that DCSD would not extend this will serve, having already done so previously with this project due to the length of time that it was in the County's review process.

Commission staff had already provided feedback and recommendations on the project to the County and the Applicant describing the same types of LCP inconsistencies detailed in this report;[38] these comments were reiterated and elaborated upon in both formal CEQA comments from Commission staff[39] and through a series of follow-up meetings (including at the site), phone conversations, and emails with County staff in late 2002 prior to the County taking action on the proposed project. Ultimately, the project was not altered in light of staff comments, and the County certified the CEQA negative declaration as part of its project approval in November 2002.

In any case, the Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This report has discussed the relevant coastal resource issues with the proposal. All public comments received to date have been addressed in the findings above. All above findings are incorporated herein in their entirety by reference. As detailed in the findings above, there do not appear to be less environmentally damaging feasible alternatives to the proposed project.

[38] By letter dated June 8, 2000, see exhibit J.

[39] By letter dated May 20, 2002, see exhibit J.